IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/07/2003

CORAM

THE Honorable MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.1191 OF 2002

1. Karbaga Balaji Finance
18/4, Kajamalai Main Road
Tiruchirapalli-23

2. Raja Narmada Finance
18/4, Kajamalai Main Road
Tiruchirapalli-23

3. Subramanian @ Lakshmanan
B-12, Thamarai Nagar
Kajamalai, Trichy .. Appellants

-Vs-

State of Tamil Nadu
rep. by Inspector of Police
(Economic Offences Wing-II)
Trichy-23 .. Respondent

This criminal appeal is preferred under Section 374(2) of the Cr.P.
C. against the judgment made in C.C.No.19 of 2000 dated 23.7.2002 on the file of the Special Judge under TNPID Act 1997, Madras.

!For Appellants : Mr.B.Mohan
for Mr.C.Sridharan

^For Respondent : Mr.V.Arul
Govt. Advocate(Crl. side)

:JUDGMENT

The accused Nos.1,2 and 4 in a calendar case, wherein the accused Nos.1 to 5 stood charged under Section 5 of the TNPID Act and Section 1 20(B) r/w 420 and 406 I.P.C., the first and second accused were found guilty under Section 5 of TNPID Act and ordered to pay a fine of Rs.50000/- each, the 4th accused was found guilty of the charge under Section 5 of TNPID Act and

sentenced to undergo R.I. for 5 years and to pay a fine of Rs.50000/-, in default, sentenced to undergo R.I. for a period of 6 months, the 4th accused was also found guilty under Section 406 I.P.C. and sentenced to undergo R.I. for one year, the 4 th accused was found not guilty u/s 120(B) r/w 420 I.P.C. and acquitted thereof, the 3rd accused was acquitted of the charge u/s 5 of TNPID act and the 5th accused was found not guilty u/s 120(B) r/w 420 I.P. C., 406 IPC and Section 5 of TNPID Act and acquitted thereof, have brought forth this appeal.

2. The brief facts necessary for the disposal of this appeal can be stated thus:
a) The accused No.4 was carrying on business of receiving fixed deposits and recurring deposits from the public in the name of accused Nos.1 to 3 and they were carrying on chit business also. The 5th accused was in managerial capacity of the said business of the 4th accused. P.W.1 Thirugnanam, P.W.2 Rathinasapabathy, P.W.3 Nagaraj, P.W.4 Panchabegesan, P.W.6 Mathiarasi, P.W.8 Yesudoss, P.W.9 Anbalagan, P.W.10 Jeyaraj, P.W.11 M.Gandhi, P.W.12 Maniyam, P.W.13 Zeenath Beevi, P.W.15 Kumar, P.W.16 Kamala, P.W.17 Palaniappan, P.W.18 Muniyandi, P.W.19 V.Selvam, P.W.23 Vijayalakshmi, P.W.25 Sundaramoorthy, P.W.31 Karunanidhi, P.W.32 Sundaramoorthy, P.W.33 Rajendran, P.W.34 Padalingam, P.W.35 Kowsalya, P.W.36 Pannerselvam, P.W.37 Shanmugavelu, P.W.38 Issac and P.W.39 Marimuthu were all subscribers to the various chits conducted by the accused Nos.4 and 5 in the name of Accused No.1. Exs. P.2 , P.11, P.16, P.17, P.19, P.21, P.23, P.25, P.26, P.27, P.31, P.33, P.34, P.37, P.40, P.41, P.42, P.43, P.45, P.46, P.54, P.55, P.57, P.6 5, P.66, P.68, P.69, P.70, P.71, P.72, P.75, P.77, P.83, P.85, P.87, P.88 and P.91 were all chit passbooks issued to the subscribers. Accused Nos.4 and 5 closed their business without returning the amounts collected from the above subscribers of the chits.
b) P.W.4 Panchabegesan, P.W.5 Geetha, P.W.10 Jeyaraj, P.W.12 Maniyam, P.W.13 Zeenath Beevi, P.W.14 A.Raju, P.W.15 S.Kumar, P.W.16 G. Kamala, P.W.19 V.Selvam, P.W.24 Jamuna Rani, P.W.25 Sundaramoorthy, P.W.2 6 Saraswathy, P.W.27 Ganesan, P.W.33 Rajendran, P.W.34 Padalingam, and P.W.38 Issac have paid amounts to the accused Nos.4 and 5 under recurring deposit scheme, which was formulated by the accused Nos.4 and 5 in the name of Accused Nos.1 to 3. The accused without returning the above said deposit amounts, closed their business. Equally, the accused Nos.4 and 5 received fixed deposits from witnesses P.W.4, Panchapakesan, P.W.7, Sivaprakash, P.W.9 Anbalagan, P.W.13 Zeenath Beevi, P.W.20, Sriramulu Naidu, P.W.21 S.Regnaraj, P.W.22 Govindammal, P.W.2 3 Vijayalakshmi, P.W.28 Angayar, P.W.29 Kadirvelu, P.W.30 Hajira Begum, P.W.31 Karunanidhi, P.W.34 Padalingam, P.W.35 Kowsalya and P.W.38 Issac and issued receipts under Exs.P.3 to 9, P.14, P.15, P.18, P.29, P.47 to 53, P.59, P.60, P.62, P.64, P.79 and P.82. Without returning the said amounts, the accused 4 and 5 have closed their business. Since the accused Nos.4 and 5 had closed their business without returning the amounts payable to the depositors and subscribers of the chit, depositors and subscribers gave complaints to the Police. Ex.P.1 is the complaint given by P.W.1.
c) P.W.44, the then Inspector of Police, City Crime Branch, Trichy on the strength of Ex.P.1 registered a case against the 4th accused in Crime No.4/98 under Section 420 I.P.C. He examined the witnesses and arrested the 5th accused and sent him for remand. He interrogated the 4th accused, when he

was in custody at Central Prison, Chennai. In the said interval, P.Ws.29 to 40 have also given complaints under Exs.P.61, P.63, P.67, P.73, P.76, P.81, P.84, P.86, P.89, P.90, P.92 and P.93 respectively. P.W.45, the then Inspector of Police, City Crime Branch, Trichy took up investigation following P.W.44. He examined the witnesses and recorded their statements. Then, the case was transferred from City Crime Branch to Economic Offence Wing II, Tiruchirapalli. P.W.46 Mohan Duraisamy, Inspector of Police, EOW II, Trichy took up further investigation of the case. After completing the investigation, he filed a charge sheet against the accused.

3. In order to prove its case, the prosecution has examined 46 witnesses and marked 94 exhibits. No material objects were marked. On the completion of the evidence of prosecution witnesses, the accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses. Accused No.4 examined himself as D.W.1. He has stated that the subscribers, who gave evidence in this case, have not paid the subscription upto the last installment; that he has paid the amounts to the prized subscribers; that the deposit amounts collected by him were lent to several persons for interest on promissory notes; that those promissory notes were seized by police and that since he was arrested, he could not recover the amount from his borrowers. After hearing rival submissions and scrutiny of the materials available, the trial court found A1, A2 and A4 guilty and sentenced them to undergo imprisonment as stated above. Aggrieved accused 1,2 and 4 have brought forth this appeal.

4. Arguing for the appellants with vigour and vehemence the learned counsel made the following submissions:

The Special Court has not taken into consideration that there was no linking evidence adduced by prosecution connecting the accused with the crime. Three kinds of transactions were conducted by the accused, one was Fixed Deposit Scheme, second was chit transaction and the other was recurring deposit scheme. Insofar as the Fixed deposit scheme was concerned, the period what was found in the fixed deposit was not matured. Since fixed deposits have not attained maturity, no question of liability to make payment under fixed deposit would arise. Insofar as the chit transaction was concerned, no one has come with a complaint either the prize money was not given to him or they have paid full chit transaction amount as found under the chit transaction, but they were not paid. No one have come forward to state that they participated in any one of the chit auctions on any day and they came out successful and not paid. A scrutiny of the evidence adduced through the witnesses would clearly reveal that actual business of A1 to A3 was being run during the relevant period and there was nothing to hold that they closed their business in order to give rise to any complaint. All the amounts collected by the accused by way of fixed deposits and chit transactions were lent to several persons for interest on the basis of promissory notes, but those promissory notes, at the time of investigation, were seized by the police, and hence, the said amounts could not be realized. Under the stated circumstances, there was no iota of evidence to hold that the accused Nos.1 and 2 were found guilty under Section 5 of TNPID Act and the 4th accused was also found guilty under Section 5 of TNPID Act and Section 406 I.P.C., and hence, they are entitled for acquittal in the hands of this Court.

5. Stoutly opposing all the contentions put forth by the appellants' side, the learned Government Advocate would urge that the trial court on

appreciation of the evidence adduced by the prosecution has found the accused Nos.1, 2 and 4 guilty, and thus, there is nothing to interfere in the judgment of the court below.

6. This Court paid its full attention on the evidence adduced by the prosecution and made a close scrutiny of the materials available. This Court is unable to agree with all or any one of the contentions put forth by the appellants' side.

7. Admittedly, A4 was the Proprietor of all the three financial institutions ranked as A1 to A3. It is also not in dispute that A5 joined service just one year prior to the complaint and he was in the managerial capacity. Thus, A5 has nothing to do with any one of the concerns as to the ownership and there is no material to show that A5 was actually conducting business. Concededly, these three financial institutions were carrying on chit transactions, recurring deposit scheme and fixed deposit scheme and amounts were collected from the public. The prosecution has clearly proved through evidence of P.Ws.1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 23, 25, 31, 32, 3 3, 34, 35, 36, 37, 38 and 39 that the accused No.4 was collecting amounts from the said subscribers and the relevant chit passbooks were also marked. Equally, he was also collecting amounts under recurring deposit scheme from P.Ws.4, 5, 10, 12, 13, 14, 15, 16, 19, 24, 25, 2 6, 27, 33, 34 and 38. In order to prove the same, the prosecution relied on Exs.10, 12, 13, 20, 22, 24, 28, 32, 35, 36, 38, 39, 44, 56, 58 , 74, 78 and 80.

8. Added further the fourth accused was also receiving amounts from P.Ws.4,7,9,13,20,21,22,23,28,29,30,31,34,35 and 38 under fixed deposits scheme and the fixed deposit receipts were marked as Exs.P.3 to 9, 14,15,18,29, 47 to 53, 59, 60,62,64,79 and 82. At this juncture, it has got to be pointed out that the factual position that A4 was collecting money from the above persons under the above three schemes, namely, chit transaction, recurring deposit scheme and fixed deposit scheme was not at all disputed by the appellants' side. What was contended before the court below and equally here also is that the chit transaction did not attain maturity, and the subscribers have not paid the balance amount; that insofar as Fixed deposit and recurring deposit are concerned, they also did not attain maturity, and hence, it was not a time by which any demand could be made or any repayment could be expected by the Subscribers or the holders of the fixed deposit receipts, and hence, even before the maturity, the complaints were given and the accused were arrested, and hence, in view of the same, the lower court should have rejected the case of the prosecution. In answer to the above, what was stated by the prosecution was that there was evidence available to show that during the currency of the chit transaction and the fixed deposit, business itself was closed by A4 on 0 6.01.1998 even before maturity and under the stated circumstances, it would be futile to contend that the deposit holders and subscribers should wait till the period of maturity.

9. This Court is of the considered view that the contentions put forth by the appellants' side have got to be discountenanced. It would be more advantageous and appropriate to reproduce Section 5 of the TNPID Act.

"Notwithstanding anything contained in Chapter II, where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit, every person responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one

lakh of rupees and such Financial Establishment is also liable for fine which may extend to one lakh of rupees."
Here is a case where A4 was running three financial institutions in the name of A1 to A3 and no fixed deposit amount was collected in the name of A3, and thus, the lower court found A3 not guilty. Insofar as A1 and A2 are concerned, it is an admitted case that all the witnesses examined by the prosecution have categorically deposed that they were subscribers under the chit transaction, which was run by the 4th accused and they have made subscription then and there and they have also been given passbooks. But, when the demand was made, the accused could not make payment.

10. Equally, the deposit holders have also given evidence as narrated above. The prosecution has examined P.Ws.41, 42 and 43, the three independent witnesses, who have spoken to the fact that the business of A4 was closed. The learned counsel for the appellants would contend that they have deposed to the fact that the business was closed at the time when they were examined in Court and not before that. Those witnesses were actually examined during the time of investigation where they have also spoken to the same fact. It is also pertinent to point out that the said three witnesses were not cross examined at all. It remains to be stated that all the complaints have emerged, since the business of A4 in the name of A1 and A2 were closed on 6.1.1998 itself. After closing down the business on 6.1.1998 as rightly pointed out by the learned Government Advocate, it would be futile on the part of the appellants to contend that the subscribers and the persons, who made deposits, should wait till the maturity date as found in the fixed deposit vouchers, and hence, the lower court was perfectly correct in finding that there was a default on the part of A4 who run A1 and A2 firms, and thus, the lower court has come to a correct conclusion that they were found guilty under Section 5 of TNPID Act. The lower court has also found the Accused No.4 guilty under Section 406 I.P.C. It is needless to say that there was an entrustment by the subscribers and the fixed deposit holders to A4 and thus, the lower court was perfectly correct in finding the accused guilty under Section 406 I.P.C. This Court is unable to notice anything to interfere in the judgment of the court below convicting the accused Nos.1,2 and 4 under Section 5 of TNPID Act and the 4th accused alone under Section 406 I.P.C.

11. Coming to the question of punishment, this Court is unable to notice anything to interfere in the punishment awarded to A1 and A2 directing them to pay a fine of Rs.50000/- each. Insofar as A4 is concerned, the lower court has sentenced him to undergo 5 years R.I. along with fine of Rs.50000/- in default to undergo R.I. for six months under Section 5 of TNPID Act. The Court is of the view that the sentence of five years R.I. under Section 5 of TNPID Act has got to be reduced to four years R.I., which would meet the ends of justice. Therefore, the sentence of 5 years under Section 5 of TNPID Act imposed by the lower court on him is reduced to four years. In other respect, the judgment of the court below is confirmed. With the above modification, this criminal appeal is dismissed.

Index : Yes
Internet : Yes

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To
1. The Special Judge under TNPID Act Cases, Chennai
2. The Principal District Judge, City Civil Court, Chennai
3. The Superintendent, Central Prison, Chennai
4. The Public Prosecutor, High Court, Madras
5. Mr.V.Arul, Govt. Advocate(Crl. Side), High Court,Chennai

6. The Dy. Inspector General of Police, Chennai-4
7. The Inspector of Police,
Economic Offence Wing-II, Trichy-23